

# Electronic Distribution of Welfare Benefits Plan Required Documents

*ERISA, health reform and other notices  
and disclosures*

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# Providing welfare benefits plan required documents electronically

## *Background*

Federal law and regulations governing employee benefits plans, particularly healthcare benefits plans, impose a variety of reporting and disclosure obligations on plan administrators (typically, the plan sponsor). Disclosure obligations exist under ERISA, COBRA, HIPAA (privacy and nondiscrimination, including wellness), FMLA, USERRA, the Americans with Disabilities Act (ADA), the Genetic Information Nondiscrimination Act (GINA), Medicare Part D and the Affordable Care Act (ACA).

ERISA requires the plan administrator to use “measures reasonably calculated to ensure actual receipt of the material by plan participants, beneficiaries and other specified individuals.” The regulations generally find that delivery by hand or first-class mail will meet that requirement.

As the world exploded into the digital age, electronic disclosure of required documents has become more and more mainstream. Regulations and other guidance issued by the Department of Labor (DOL), Treasury (IRS) and Health and Human Services (HHS) permit *electronic* disclosure of most required documents, in certain circumstances. A plan administrator must take care to ensure that the methods by which it electronically furnishes these documents comply with applicable requirements.



The guidance, if followed scrupulously, provides plans with a safe harbor method of using electronic means to distribute required documents and other plan communications. While most employers treat safe harbors as the required method of distribution, they are not the sole method of distribution plans can use. Plans are permitted to use additional methods not formally set out in the safe harbor. As long as the employer can demonstrate the information was received and the details were effectively communicated, the employer has met the ERISA standard. Moreover, the real and practical concern for employers is whether the plan participants and beneficiaries have received the information necessary to access the promised plan benefits. As long as the information is effectively communicated, the employer has met its obligation, regardless of the form the communications takes.

Unfortunately, the requirements are increasingly archaic and the e-disclosure rules vary, sometimes considerably, depending on the law giving rise to the disclosure obligation, the federal agency that enforces that law, and the individuals entitled to the disclosure. Plan administrators will find compliance with e-disclosure rules easier with respect to some employees than with respect to others, and easier with respect to *employees* than with respect to *non-employees* such as retirees and COBRA beneficiaries.

They will also find compliance easier with respect to some *documents* — such as summary plan descriptions (SPDs), summaries of material modification (SMMs), summaries of material reduction (SMRs) and summary annual reports (SARs) — as opposed to others — such as COBRA notices, which often must go to a wider audience.

## *What's at stake?*

When a plan administrator endeavors to supply a required disclosure electronically but fails to comply with the applicable e-disclosure rule, typically the result is that the disclosure is deemed not to have been made. In other words, the law says the individual entitled to the document didn't receive it. That can have unhappy consequences.

For example, take the case of an individual who obtains medical care that, due to a recent but undisclosed change in the individual's health plan, is no longer a covered treatment, or is subjected to an increased deductible. The plan sponsor is likely to have a fight on its hands, and may also be subject to federally-imposed penalties for failing to make the required disclosure timely.

Or suppose a plan sponsor fails to adequately deliver an electronic COBRA general or initial notice to an employee's spouse. In the event of a later divorce or legal separation that causes a loss of the spouse's coverage, the spouse may be excused from the obligation under COBRA to notify the plan within 60 days; the spouse may be deemed to have never received the general or initial COBRA notice that explains the 60-day notice obligation. The COBRA obligation to the spouse may linger in that case, perhaps for many months or even years.

In addition, there are significant monetary penalties, ranging from more than \$100 per day (for many ERISA-required documents) to more than \$1,000 per violation (in the case of summaries of benefits and coverage) for failure to make timely disclosures required by various federal laws in a timely fashion. While most such failures would likely go undiscovered by federal authorities, they can create problems in other ways. For example, a company that has failed to comply with notice and disclosure obligations might have those failures discovered and identified by the buyer in a proposed acquisition or merger. The buyer may want the seller to escrow a significant portion of the sales proceeds as a hedge against a possible federal enforcement effort.

This *Benefit Insights and Guidance* endeavors to clear the cloud of mystery around electronic disclosure, and provide plan administrators with the necessary road map to take advantage of e-disclosures where it makes sense to do so and avoid potential pitfalls later.

## *Electronic disclosure of notices required by ERISA (but non-ERISA employers beware!)*

ERISA imposes a sweeping variety of disclosure obligations on plan sponsors; select key obligations are listed below.

Summary plan description (SPD)	Summary annual report (SAR)	COBRA notices	Summary of material modifications (SMM)
<p><b>ERISA PLANS ONLY</b></p> <p>A summary of key plan provisions; content dictated by DOL regulations. Issued within 90 days after enrollment. Reissued at least every five years if there have been changes to the plan, 10 years if not.</p>	<p><b>ERISA PLANS ONLY</b></p> <p>A summary of the plan's Form 5500 annual report. Provided within two months after the Form 5500 is filed. Required of insured plans, and self-insured plans considered "funded" (e.g., benefits are paid from a trust).</p>	<p><b>ERISA AND NON-ERISA PLANS</b></p> <p>Provided shortly after enrollment, and upon a loss of coverage due to specific events, an early termination of COBRA, and an individual's request for COBRA when COBRA is not available. These disclosures are difficult to accomplish electronically.</p>	<p><b>ERISA PLANS ONLY</b></p> <p>A summary of material, but not adverse, changes to the plan. Provided within seven months following the close of the plan year in which the change is adopted.</p>

Women's Health and Cancer Rights Act Notice	Michelle's Law Notice	Summary of material reduction in benefits (SMR)	Children's Health Insurance Program (CHIP) notice	Claims and appeals notices
<p><b>ERISA AND NON-ERISA PLANS</b></p> <p>An annual notice disclosing the plan's required coverage obligation for breast reconstruction and related services in connection with a mastectomy.</p>	<p><b>ERISA AND NON-ERISA PLANS</b></p> <p>A notice summarizing the availability of continued pre-COBRA coverage for ill college students.</p>	<p><b>ERISA PLANS ONLY</b></p> <p>A summary of a material plan change that effects a reduction in benefits, such as elimination of a benefit, addition of an exclusion, increase in cost-sharing, etc.. Provided within 60 days after the change is adopted.</p>	<p><b>ERISA AND NON-ERISA PLANS</b></p> <p>An annual notice to inform employees of potential opportunities currently available in the state in which the employee resides for group health plan premiums assistance under Medicaid and the Children's Health Insurance Program (CHIP).</p>	<p><b>ERISA PLANS ONLY</b></p> <p>Notices provided upon a complete or partial denial of a claim for benefits (the notice is typically provided via an "explanation of benefits," or EOB); timing depends on the nature of the claim and whether the claim relates to urgent care, care about to be received or care already received.</p>

Not an ERISA employer? It's important to remember that some of these same disclosures also apply to **non-ERISA** employers under other federal laws such as the Internal Revenue Code ("the Code") or the Public Health Service Act (PHSA).



## Two e-disclosure methods under ERISA’s safe harbor, plus one additional method

The safe harbor offers two general methods (Method 1 and Method 2) by which a plan administrator may, at least in theory, make electronic disclosures of the documents in the grid above. As a practical matter, some of these documents are rarely, if ever, amenable to e-disclosure. We describe those situations further below, or in the Electronic Disclosure Reference Matrix at the back of this publication. There is an additional method (Method 3) that employers might consider. Method 3 is not a DOL-sanctioned safe harbor for welfare plans. It is a DOL-sanctioned safe harbor for retirement plans. While that does not mean it is an acceptable method, per se, it likely does meet the actual ERISA standard of effectively communicating the information to the plan participants and beneficiaries. Therefore, it is likely an option that employers can use to meet their requirements.

### Method 1: Making electronic disclosures to employees who use the employer’s computer network as an integral part of their duties

Method 1 applies with respect to plan participants able to effectively access the electronic documents where the participants are reasonably expected to perform their duties as employees, and with respect to whom access to the employer’s e-information systems (e.g., the employer’s computer system) is an *integral part of their duties*.

Thus, it is easier for an employer to furnish disclosures electronically to employees who, for example, have a desktop or laptop computer at their workstations and have access to the employer’s e-information system as an integral part of their duties.

Simply providing kiosks at worksites where electronic information networks or systems are not otherwise an integral part of workers' duties will not allow the plan sponsor to use Method 1, at least with respect to those employees who have no access to the sponsor's computer network as an integral part of their duties. For these employees, the employer will have to supply paper versions, or attempt to use Method 2, described later.

## METHOD 1: HOW TO DO IT

As with paper disclosures, the plan administrator must use an electronic disclosure method that is "reasonably calculated to ensure actual receipt."

As a general rule, this is not supposed to mean that the administrator must guarantee receipt. But DOL regulations say the administrator is required to use methods that "ensure ... the system for furnishing documents results in actual receipt of the transmitted information and documents" (emphasis supplied).

We interpret this to mean that the administrator is not required to demonstrate that every individual necessarily receives the disclosure, but is required to demonstrate that generally, its electronic disclosure method is resulting in actual receipt.

To that end, there are four general steps involved with Method 1.

### **1. Issue a notice about the electronic disclosure each time an electronic disclosure is made.**

The notice must inform participants about the electronic disclosure, the significance of the disclosure, and the participants' right to obtain a paper copy without charge.

The notice itself may be electronic, such as an e-mail. The notice does not have to be a separate, stand-alone notice. It may be part of a larger e-mail message that includes additional disclosures, *but the notice about the ERISA-required disclosure must be prominent.*

**LOCKTON COMMENT:** For example, the administrator sends participants an e-mail, attaching an electronic version of or a link to the disclosure document, such as a summary plan description (SPD) or summary annual report (SAR), letting the participant know the significance of the attachment and the participant's right to a paper copy (or letting participants know that the disclosure document is available for retrieval on the employer's webpage; see the example immediately below for additional requirements in that event). See sample notice language in the Model Notice Appendix at the back of this document.

Where an employer intends to post disclosures (such as an SPD or SAR) electronically on the employer's intranet or other web page, participants must receive the same notice (in writing or electronically) described above, about the posting. In addition, the website home page should contain a link to the section of the website that contains information about the plan, and directions about how to obtain a replacement for a lost or forgotten password (if applicable). The electronic disclosure should remain available on the webpage for a reasonable period of time to allow for retrieval by participants.



**EXAMPLE:** A plan administrator wishes to “distribute” the plan’s SPD to participants who access the employer’s computer system as an integral part of their duties by posting the SPD to the employer’s intranet. The employer sends these participants an e-mail, alerting them to the availability of the SPD on the intranet. The e-mail contains a link to the appropriate intranet page, and explains both the significance of the SPD and the right to obtain a paper copy.

### **2. Ensure that the electronic disclosure method is resulting in “actual receipt.”**

To accomplish this, employers might use an e-mail “return receipt” feature, where either the recipient affirmatively acknowledges receipt, or perhaps the e-mail system generates a report showing who opened the e-mail and whose e-mail was returned undelivered. Other and easier methods, in next generation e-mail and employee communications platforms, may also exist to meet this second requirement. Alternatively, the plan administrator might periodically simply conduct reviews or surveys to confirm actual receipt of electronically-transmitted information with respect to the vast majority of employees.

### **3. Third, the actual disclosure itself must be presented in a manner that is consistent with applicable style, format and content requirements for such documents furnished in paper format.**

This requirement is intuitive: The electronic document must contain the same information that a paper document of the same type is required to contain. Where there are style or format requirements for a disclosure made via paper, those same style and format requirements apply to the e-disclosure.

### **4. Where relevant, the plan administrator must endeavor to ensure the confidentiality of any personal information.**

## **Method 2: Furnishing electronic disclosures to employees who do not have access to the employer’s computer network as an integral part of their duties and where they are expected to perform those duties, including former employees, retirees, COBRA beneficiaries, etc.**

With respect to non-employee participants and beneficiaries, and to employees who do not meet the “integral part of their duties” standard, e-disclosure is handled in the same manner as described above, but with additional requirements the plan administrator must meet. In a nutshell, the individual on the receiving end of the e-disclosure must **affirmatively consent** to the electronic nature of the disclosure.

Method 2 will typically apply where the plan administrator wants to make e-disclosures to plan participants who are, for example, manufacturing, retail, hospitality or similar employees who may lack network access as an integral part of their duties.



As with Method 1, Method 2 can be used for distributing a large swath, but as a practical matter, not all of the disclosures are identified in the grid above. There are some individuals with respect to whom Method 2 is simply not practical. Again, see the Electronic Disclosure Reference Matrix at the end of this publication for more details.

## METHOD 2: HOW TO DO IT

To make e-disclosures to individuals who do not have access to the employer's network as an integral part of their duties, the plan administrator must meet the first through fourth requirements described above, plus a fifth requirement:

### **5. Obtain affirmative consent to electronic disclosure from the individuals to whom the disclosure is made.**

Meeting this fifth requirement requires, in turn, an additional disclosure. To make their consent valid, these individuals — prior to consenting — must be furnished a statement indicating:

The types of documents to which the consent would apply (e.g., an SAR, SPD, etc.).

That consent may be withdrawn at any time.

The procedures for withdrawing consent and updating e-mail addresses, as applicable.

The right to request and obtain paper copies of any documents free of charge.

Any software or hardware requirements for accessing and retaining the documents.

See two samples of this affirmative consent disclosure in the Model Notice Appendix at the back of this publication.

As a practical matter, it is sometimes difficult for plan administrators to supply electronic disclosures via Method 2, especially to former employees, retirees, and COBRA beneficiaries. Plan administrators sometimes conclude that it is easier, with respect to individuals who are entitled to a disclosure and who do not access the employer's computer system as an integral part of their duties, to simply provide paper copies of documents to such people.

### **Method 3: Using the retirement plan safe harbor to provide information electronically**

In 2020 the DOL announced its final rule (the Rule) allowing employers to post retirement plan disclosures online or deliver them by email, as a default method of making required disclosures electronically. The DOL specifically noted that this method is not a safe harbor for welfare plans. Nevertheless, it provides a method for employers to consider when deciding how to deliver the communications electronically in an effective manner.

The Rule allows for two options for electronic delivery:

**WEBSITE POSTING:** Post documents on a website if appropriate notification of internet availability is furnished to the electronic addresses of covered participants.

**EMAIL DELIVERY:** Alternatively, plans may send documents directly to the electronic addresses of covered individuals, with the documents either in the body of the email or as an attachment to the email.

This retirement plan safe harbor includes a variety of protections for covered individuals, some of which may seem counterproductive to some employers. They include:

**RIGHT TO PAPER:** Covered individuals can request paper copies of specific documents, or opt out of electronic delivery entirely, at any time, free of charge.

**INITIAL NOTIFICATION:** Covered individuals must be furnished an initial notification, on paper, that the way they currently receive plan disclosures (e.g., paper delivery in the U.S. mail) is changing. The notice must inform them of the new electronic delivery method, the electronic address that will be used, and the right to opt out if they prefer paper disclosures, among other things. The notice must be given to them before the plan uses this method.

**NOTIFICATIONS OF INTERNET AVAILABILITY:** Covered individuals generally must be furnished a notice of internet availability (NOIA) each time a new covered document is made available on an internet website. To avoid "notice overload," the Rule permits the employer to provide an annual NOIA that includes information about multiple covered documents, instead of providing multiple NOIAs throughout the year. The NOIA must briefly describe or identify the covered document being posted online, include an address or hyperlink to the website, and inform the covered individual of the right to request paper copies or to opt out of electronic delivery altogether. The NOIA must be concise and understandable, and contain only specified information.

**WEBSITE RETENTION:** Disclosures provided via a website must remain on the internet website until superseded by a subsequent version and always for at least one year.

**SYSTEM CHECK FOR INVALID ELECTRONIC ADDRESSES:** Plan administrators must ensure the electronic delivery system alerts them if a participant's electronic address is invalid or inoperable. In that case, the administrator must attempt to promptly cure the problem or treat the participant as opting out of electronic delivery.

**SYSTEM CHECK AT TERMINATION OF EMPLOYMENT:** When someone leaves their job, the plan administrator must take steps to ensure the continued accuracy and operability of the person's employer-provided electronic address or obtain a new electronic address.

Before implementing, employers should:

- Evaluate the current communications strategy and the needs of the workforce.
- Determine what strategy is in the best interest of the plan and its participants, taking into consideration effectiveness, ease of use and cost to the plan.
- Consult their recordkeeper or third-party administrator to determine its ability to implement this process, and formulate a timeline that includes each of the requirements.
- Pay special attention to how electronic addresses will be captured and how the process system requirements will be carried out. This may be particularly challenging for high-turnover workforces.
- Maintain the documentation necessary to demonstrate the information was received.

**LOCKTON COMMENT:** This is the key to all communications from plans and employers to the plan participants and beneficiaries. Paper communications have the benefit of a presumption that if mailed via first class mail, the information was received by the addressee. That presumption is not available for electronic communications; however, it is much easier for electronic systems to track the communications and allow the employer to demonstrate actual delivery. So, the Rule provides a viable method for employers to use, even though it is not a DOL safe harbor with respect to welfare plans.

## A word about COBRA notices, and claims and appeals notices

While in theory a plan administrator could supply COBRA notices electronically, in practice it is impracticable at best.

COBRA notices are critical notices. They are frequently missed, the failures often litigated, and penalties often awarded by courts. Where an employee is enrolling family members, the initial COBRA notice needs to go not just to the employee, but his or her enrolled dependents as well. Unlike the Medicare Part D and HIPAA privacy notices, delivery to the employee — even hand delivery — is not considered delivery to the dependents.



Federal rules essentially require the notice be mailed by no worse than first class mail, addressed, for example, to the employee “and family.” So e-disclosure of this initial COBRA notice is difficult indeed and not recommended, unless the employer has email addresses for family members and they consent to the e-disclosure.

**LOCKTON COMMENT:** In the rare case (particularly in light of the Affordable Care Act’s employer mandate) where the employer offers coverage only to the employee, or where the employer offer family coverage but the employee enrolls in self-only coverage, Method 1 or 2, as applicable, could be feasible for supplying the employee his or her initial COBRA notice.

Claims and appeals notices are issued by the plan’s claims administrator to the claimant, typically the individual who incurred the claim. Method 1 is rarely feasible for delivering claims and appeals notices, but many insurers and third-party administrators make Method 2 available, allowing enrollees in the health plan to opt into the claim payer’s electronic distribution process if they desire to receive their claims and appeals notices electronically.

## *Electronic disclosure of notices required by laws other than ERISA*

Some required disclosures, including many of those brought about as part of the Affordable Care Act and related health reform rules, have electronic disclosure standards that rely on Method 1 and Method 2 above, but others offer e-disclosure rules that are slightly different and sometimes easier to meet than those methods.

**LOCKTON COMMENT:** What are we to make of this? One answer is that rather than try to implement different e-disclosure practices depending on the nature of the disclosure, the employer adopts the most onerous method of e-disclosure (e.g., Method 2) for all its e-disclosures. In essence, devolving to the most onerous common denominator.

The following subsections discuss these disclosures and the associated electronic disclosure standards in more detail. A summary of these disclosures and the permissible methods for providing them electronically appears in the Electronic Disclosure Reference Matrix at the back of this publication.

## Medicare Part D: Notices of creditable/noncreditable coverage

The Medicare Part D rules require that sponsors of group health plans notify each person enrolled or seeking enrollment in the plan and who is also covered by Medicare Part A or B, regarding whether the plan's prescription drug benefit is as good as Medicare Part D (i.e., is "creditable") or not as good (i.e., is "noncreditable").

The notice is important because if an individual enrolls late in Medicare Part D, and is transitioning from employment-based noncreditable coverage, he or she pays an indefinite late enrollment penalty.

Guidance issued by the Centers for Medicare and Medicaid Services (CMS) allows plan sponsors wishing to make the disclosure electronically to use methods very similar to the methods described above, for ERISA disclosures. Thus, for plan participants "who have the ability to access electronic documents at their regular place of work [and] ... have access to the plan sponsor's electronic information system on a daily basis as part of their work duties," Method 1 described above is available.

**LOCKTON COMMENT:** When a plan sponsor supplies a Medicare Part D notice to an employee or retiree (or COBRA beneficiary), that notice is deemed to have been supplied to the recipient's dependents. Where the plan sponsor chooses Method 1 as the e-disclosure method for employees, the sponsor must inform the plan participant that he or she is responsible for providing a copy of the electronic disclosure to the participant's Medicare-eligible dependents covered under the group health plan.

For other individuals, those who don't have adequate access to the employer's electronic information system, the sponsor can still provide the Part D disclosure electronically in accordance with Method 2-like rules, meaning the recipient must affirmatively consent to the e-disclosure and demonstrate adequate access to electronic information.

Before these individuals may validly consent to e-disclosure, they must receive a Method 2-like notice of their right to obtain a paper version, how to withdraw their consent, how to update address information, and be advised of any hardware or software requirements needed to access and retain the creditable coverage disclosure.

If the individual consents to an electronic delivery of the notice, he or she must supply a valid e-mail address to the plan sponsor **and the consent must be submitted electronically to the sponsor**. This ensures that the individual has the ability to receive the disclosure electronically, and ensures that the system for furnishing the documents results in actual receipt.



**LOCKTON COMMENT:** In addition to having the notice of impending e-disclosure sent to the individual’s email address, the notice must be posted on the sponsor’s intranet site, if it has one, with a link to the creditable coverage disclosure notice on the home page.

As with the Method 1-like approach, if the plan sponsor uses this Method 2-like method for Medicare Part D disclosures, it must inform the plan participant that he or she is responsible for providing a copy of the electronic disclosure to his or her Medicare-eligible dependents covered under the group health plan.

The Medicare Part D notice may be combined with other electronically-provided plan materials, but must be “conspicuous.” In that case there must be a text box atop the materials, noting in 14-point font that the packet includes a Medicare Part D notice.

## HIPAA: The privacy notice

Sponsors of self-insured healthcare plans, or insured plans where the sponsor has gone “hands on” the plan’s protected health information, must issue plan enrollees a privacy notice explaining the protected health information the plan may receive, and the uses the plan makes of such information. As is the case with the Medicare Part D notice, supplying a notice to a covered employee or retiree is deemed to accomplish notice to his or her dependents.

This HIPAA privacy notice may be provided electronically, **but only if the individual recipient specifically consents to receiving it electronically.** In addition, for employers that maintain plan-related websites, or for those employers who maintain an internal webpage or intranet for various postings that are pertinent to employees, the notice should also be perpetually posted there.

**LOCKTON COMMENT:** The e-disclosure method for HIPAA disclosures is an illustration of why the “lowest common denominator” approach, to wit, obtaining affirmative consent to all e-disclosures, might make the most sense from the standpoint of standardizing the employer’s e-disclosure approach even where Method 1 might be acceptable for ERISA disclosures.

## ACA: Electronic disclosure of summaries of benefits and coverage (SBCs)

The Affordable Care Act requires medical plan sponsors to provide individuals eligible for or enrolled in the medical plan an eight-page summary of key plan benefits and cost-sharing requirements. The SBC is different from the summary plan description required by ERISA; the two documents serve some of the same, but also some different purposes, and their disclosure rules differ.

**LOCKTON COMMENT:** Lockton has prepared a detailed explanation of the SBC and its disclosure requirements in our Employer Guide to the Summary of Benefits and Coverage. That piece is available from your Lockton account service team.

The SBC disclosure rules, and therefore the e-disclosure rules, differ depending on whether enrollment occurs online or via paper, and whether the person entitled to the SBC is already enrolled, or merely eligible for coverage but also not yet enrolled.

### PROVIDING THE SBC TO PARTICIPANTS WHO ARE ALREADY ENROLLED

The SBC should be included with open enrollment materials. If open enrollment occurs online (electronically), the SBC may be provided as part of the online enrollment process. Presumably this can occur as an electronic version of the SBC that the enrollee may view and print, or a downloadable version that the enrollee may download and print.

There's little detailed guidance on how the SBC may be provided electronically, where open enrollment occurs online. May the SBC be sent via an email, where employees actually accomplish enrollment through some other electronic portal? Is it adequate to simply post a link to the SBC on the electronic portal the employee must enter to enroll or reenroll? Presumably, both of these methods would be acceptable.

**LOCKTON COMMENT:** If the enrolled participant requests a paper copy of the SBC, however, the plan must honor that request.

If the reenrollment does not occur online, the insurer or plan administrator may include a paper version of the SBC with the paper enrollment packet, or may deliver the SBC electronically. But in this latter case the rules governing electronic distribution are more challenging: the plan sponsor must satisfy the ERISA e-disclosure rules; that is, Method 1 or Method 2, depending on whether the recipient has routine access to the employer's electronic information systems as an integral part of his or her duties.

### PROVIDING THE SBC TO INDIVIDUALS WHO ARE ELIGIBLE FOR COVERAGE BUT NOT ENROLLED

Plans are also required to make SBCs available to individuals who are eligible for coverage but not yet enrolled. According to final regulations issued by federal agencies, the plan satisfies its disclosure obligation by providing paper versions, or by making electronic versions "readily accessible" and supplying a paper version upon request.



The electronic SBC may simply be posted on a web page, as long as the plan notifies the eligible individuals via e-mail or in writing (say, on a postcard) advising the individuals that the documents are available online, showing the online address and notifying the individual that the documents are available in paper form upon request.

**LOCKTON COMMENT:** The plan administrator's obligations are not entirely clear where the administrator may be aware that many in its workforce don't have web access at their homes. In that case it's not clear whether the online documents are "readily accessible" even though the administrator sends a postcard to the employees' homes advising them about how to access the documents online. Here, the administrator might be required to mail copies of the relevant SBCs. The safe approach to an e-disclosure attempt may be a Method 2-like approach, where the plan administrator obtains affirmative consent to e-disclosure from individuals with respect to whom the administrator does not know whether they have internet access.

## ACA: Electronic disclosure of the ACA marketplace notice

Federal rules permit employers to electronically supply the ACA-imposed marketplace notice (due within 14 days after hire) using either Method 1 or Method 2, as applicable.

**LOCKTON COMMENT:** Oddly enough, there is no federally imposed penalty for failure to supply the marketplace notice.

## ACA: Report of medical insurance coverage offers to full-time employees, and report of self-insured minimum essential coverage (Form 1095-C)

Employers subject to the ACA's employer mandate use Form 1095-C to demonstrate, with respect to any individual full-time (for ACA purposes) employee that the employer made an offer of medical coverage to him or her, or if not, why not. Self-insured employers also use Form 1095-C to report the fact of self-insured medical coverage supplied to any individual.

**LOCKTON COMMENT:** With the penalty for failure to comply with the ACA's individual mandate reduced to zero after 2018, reporting of self-insured coverage may be excused for 2019 and later years.

The IRS permits e-delivery of the Form 1095-C as long as the recipient consents. The consent may be electronic, as in an email, or it may be on paper. If on paper, the recipient must confirm his or her consent electronically, to demonstrate the ability to retrieve the electronic form.

Consent to e-delivery must be preceded by a notice to the recipient reflecting specific information regarding the importance of the Form 1095-C and its applicability to certain tax forms.

**LOCKTON COMMENT:** See the Model Notice Appendix at the back of this document for a sample notice seeking consent to provide the 1095-C electronically.

The notice seeking consent to e-delivery may also be given electronically. Vendors (who may have prepared the 1095-C forms) can facilitate consent by providing this notice when an individual accesses a website to retrieve a Form 1095-C.

**LOCKTON COMMENT:** Sometimes, however, the employer prefers to make the Form 1095-C available electronically via the employer's own intranet or website, such as when the employer has mailed Forms 1095-C to employees but then discovers that some forms need correction, and the employer does not want to mail a second large batch of forms.

Many employees have consented to receiving Forms W-2 electronically. However, that consent does not apply to Form 1095-C. A separate or additional consent is required.

## **ACA: Notice of grandfathered status, notice of retroactive coverage termination, and notice that expatriate coverage constitutes minimum essential coverage**

Three seldom-used, ACA-imposed notices may be supplied electronically, but the best practice for at least one of them is to supply the notice in hard copy.

### **NOTICE OF GRANDFATHERED STATUS**

The relative handful of group health plans that remain "grandfathered" after the ACA's enactment are required to supply a notice of the plan's grandfathered status. Typically the notice is included in the summary plan description, and therefore is supplied electronically in accordance with ERISA's Method 1 or Method 2, along with that summary.

### **NOTICE OF RETROACTIVE COVERAGE CANCELLATION, I.E., RESCISSION**

The ACA severely restricts a medical plan's ability to terminate coverage retroactively. In the rare instances where that's allowed, the plan sponsor must notify the affected participant in advance. The better practice is to send the notice by registered mail, to ensure there is some proof the notice was sent and, ideally, received.

### **NOTICE OF EXPATRIATE PLAN'S STATUS AS MINIMUM ESSENTIAL COVERAGE**

Federal rules permit this notice to be supplied electronically in accordance with ERISA's Method 1 or Method 2, as applicable.

## ACA: Wellness program notice of alternative standards

The ACA codified long-standing HIPAA wellness program rules. Those rules require that employers sponsoring health plan-related workplace wellness programs that include activity- or outcomes-based standards provide program participants with a notice of reasonable alternative standards, for participants who can't achieve the programs' initial standards due to a health condition.

Because these wellness programs are health plan-related (i.e., they either are health plans because they supply medical care such as biometrics, or the incentive or penalty is related to benefits or cost-sharing under a health plan), the notice of alternative standards is often provided with other health plan disclosures, or even as part of another disclosure like a summary plan description. Accordingly, best practices for e-disclosure would suggest using Method 1 or Method 2 described above, as applicable, in the discussion concerning ERISA-related disclosures.

## EEOC notice under the ADA for employees participating in wellness program

The EEOC has its own regulations governing workplace wellness programs that include medical examinations (like biometric screenings or health risk assessments) or collect family medical history, in exchange for incentives. Under these regulations, employers sponsoring such programs must provide notice to employees (and sometimes spouses) participating in the programs.

**LOCKTON COMMENT:** Portions of the EEOC regulations are in limbo, as a federal court has ordered those portions vacated effective Jan. 1, 2019. The EEOC is expected to offer substitute regulations, but not before 2019. Nevertheless, the portion of the regulations dealing with required notices remains in effect.

This notice must include what information will be collected, how it will be used, who will receive it, and what will be done to keep it confidential. The EEOC has published a sample notice to help employers comply.

This notice can be provided “in any format that will be effective in reaching employees being offered an opportunity to participate in the wellness program.” Email distribution, for employees and spouses lacking routine access to the employer's information system, would seem inadequate under this standard. As a practical matter, then, Method 1 and Method 2 (as applicable, and as discussed above in the section concerning ERISA-required disclosures) would appear to be a reasonable approach.

**LOCKTON COMMENT:** The EEOC rules require that spouses receive a specific notice if they're asked to provide health information in exchange for an incentive. As a practical matter this notice should be hand-delivered to the spouse or mailed; e-delivery to the spouse will typically be impractical.

Guidance has also mandated that non-wellness information should not be included in any part of this transmission. This suggests that including this notice as part of the summary plan description, for instance, would not be acceptable. Therefore, best practice may be to provide this notice in a standalone fashion.



## Conclusion

As technology continues to evolve, more plan sponsors will look to provide required disclosures electronically, and find better, more innovative ways to obtain consent from employees who don't have access to the employer's e-information system as an integral part of their duties, but who obtain most of their information about the outside world from mobile phones and other handheld e-media devices. We hope federal authorities will update their guidance to facilitate this, but until then plan sponsors will continue to find efficient ways to provide e-disclosures, consistent with the general parameters of the federal guidance.

# Electronic disclosure reference matrix

The disclosure	Who gets it?	Deadline	E-disclosure methods
<b>ERISA-required disclosures (* denotes the disclosure applies to non-ERISA plans as well)</b>			
Summary plan description (SPD)	Participants, COBRA beneficiaries and QMCSO alternate recipients	90 days after coverage begins	Method 1 or Method 2, as discussed above regarding ERISA-required disclosures
Summary annual report (SAR)	Participants, COBRA beneficiaries and QMCSO alternate recipients under insured or funded (e.g., as through a trust) self-insured plans	9 months after close of the plan year (unless the Form 5500 due date is extended, then 2 months after the extended deadline)	Method 1 or Method 2, as applicable
Summary of material modifications (SMM)	Affected participants, COBRA beneficiaries and QMCSO alternate recipients	7 months after close of the plan year in which the material change was adopted	Method 1 or Method 2, as applicable
Summary of material reductions (SMR)	Affected participants, COBRA beneficiaries and QMCSO alternate recipients	60 days after adoption of a material reduction in health benefits	Method 1 or Method 2, as applicable
Women’s Health and Cancer Rights Act (WHCRA) notice*	Participants, COBRA beneficiaries and QMCSO alternate recipients	The last day of the plan year preceding the year to which the notice relates	Method 1 or Method 2, as applicable
Children’s Health Insurance Program (CHIP) notice*	All employees, whether or not enrolled or even eligible for the employer’s health insurance	The last day of the plan year preceding the year to which the notice relates	Method 1 or Method 2, as applicable
Michelle’s Law notice*	Participants, COBRA beneficiaries and QMCSO alternate recipients under medical plans requiring certification of student status for dependent children age 26 or older	With any notice requiring certification of student status	Method 1 or Method 2, as applicable
COBRA general notice*	All enrollees (notice required to be provided to primary insured (employee or retiree) and spouse, and to any other covered dependent the plan knows lives apart from the primary insured)	90 days after coverage begins	E-disclosure not recommended; best practice is first class mail (or better) addressed to the employee (or employee “and family” where spouse and/or other dependents are enrolled)

The disclosure	Who gets it?	Deadline	E-disclosure methods
COBRA election notice*	COBRA qualified beneficiary who lost coverage due to a COBRA qualifying event	Within 44 days after the COBRA qualifying event (if plan is insured, employer notifies the plan administrator within 30 days)	E-disclosure not recommended
ERISA claims and appeals notices	Claimants for benefits, particularly where a claim is denied in whole or in part	Various deadlines depending on the nature of the benefit and whether the claim is for urgent care, or is a pre-service, post-service or concurrent care claim	Method 1 or Method 2, as applicable
<b>Medicare Part D disclosures</b>			
Notice of creditable/non-creditable coverage (Medicare Part D notice)	Employees, retirees, and dependents covered by Medicare and also enrolled or seeking enrollment in the employer's group health plan. Unlike COBRA notices, delivery to the participant is deemed delivery to dependents	October 15 of each calendar year, but a notice provided at open enrollment (or some other time) is good for 12 months unless the creditable nature of the plan's prescription drug coverage changes	E-disclosure is permitted under rules similar to Method 1 and Method 2. If affirmative consent is required, it must be supplied via a valid e-mail address and the consent must be submitted electronically. Restrictions apply where including the notice with other notices.
<b>HIPAA privacy disclosures</b>			
HIPAA privacy notice	All enrollees (delivery to the participant is deemed delivery to dependents) in a self-insured healthcare plan, or in an insured plan where the sponsor is "hands on" the plan's protected health information	Upon enrollment, within 60 days following a material change to the privacy policy, or upon request; a reminder notice is supplied every three years, but best practice is simply to provide the privacy notice at enrollment and at each open enrollment period	E-disclosure is permitted but requires affirmative consent
<b>Affordable Care Act disclosures</b>			
Grandfathered plan disclosure notice	Participants in grandfathered plans under the ACA	First day of the plan year	Method 1 or Method 2, as applicable; typically included in the summary plan description

The disclosure	Who gets it?	Deadline	E-disclosure methods
Summary of benefits and coverage (SBC)	Current participants	During enrollment period, or within 90 days after special enrollment	Relaxed method (inclusion in online enrollment portal, if enrollments occur online); or Method 1 or Method 2, as applicable, where enrollment does not occur online
	Employees eligible but not enrolled	During enrollment period	E-disclosure permitted via posting on intranet site if employees receive notice of where to find the SBCs; notice can be electronic for those routinely accessing the employer's e-information system as an integral part of their duties, or via postcard for those who don't.
Disclosure regarding insurance exchanges (Marketplace notice)	All employees (whether or not enrolled in coverage or even eligible for coverage)	Within 14 days of hire	Method 1 or Method 2, as discussed above
Form 1095-C	Each person who was an ACA full-time employee for an applicable large employer (ALE) for at least one month during the prior calendar year, and each "primary insured" who had coverage for at least one day under a self-insured plan of an ALE during the prior calendar year	By January 31 following the year in which the coverage was provided (the IRS has frequently delayed this deadline)	Yes, with an exception to the general rules; see discussion above.
Notice of retroactive coverage cancellation ("rescission")	Affected participants who are losing coverage retroactively due to fraud or material misrepresentation	No less than 30 days prior to the date coverage is canceled	Not recommended; see discussion above
Notice that expatriate coverage qualifies as minimum essential coverage	Participant covered under the expatriate coverage issued by a non-U.S. insurer	Coincident with distribution of other plan materials	Method 1 or Method 2, as discussed above, and as applicable
Notice of Qualifying Small Employer Health Reimbursement Arrangement (QSEHRA)	All eligible employees of small employers who sponsor a QSEHRA	At least 90 days before the beginning of a year for which the QSEHRA is provided (or, in the case of an employee who is not eligible to participate in the arrangement as of the beginning of such year, the date on which such employee is first so eligible)	Not permitted
<b>Wellness program disclosures</b>			
HIPAA/PPACA notice of availability of alternative standards	All employees eligible to participate in an employer-sponsored wellness program where incentives are activities- or outcomes-based	Include in all plan materials describing the terms of the program, whether those materials are written in paper copy or posted electronically.	Method 1 or Method 2, as discussed above and as applicable
EEOC notice under ADA for employees participating in wellness program involving incentives for medical exams/disability-related inquiries	All employees eligible to participate in a medical examination or disability-related inquiry (as defined by the ADA) that is part of an employer-sponsored wellness program.	Prior to the collection of health information, and at a time that allows the employee enough time to decide whether or not to participate	Yes, with an exception to the general rules; see discussion above

The disclosure	Who gets it?	Deadline	E-disclosure methods
<b>Family Medical Leave Act (FMLA) disclosures</b>			
EEOC spousal authorization under GINA for collection of health status/health history information	Employees' spouses invited to provide information related to current health status or health history in exchange for an incentive, related to an employer-sponsored wellness program	Prior to the collection of the information regarding the spouse's current health status or health history	Not discussed by the regulations and not recommended
Notice of cancellation of coverage during FMLA leave (for nonpayment)	Covered employees on FMLA leave, whose coverage terminates due to nonpayment of premium	No earlier than 30 days after employee's premium payment is late, and at least 15 days prior to the date coverage will cease	Not allowed; first class mail preferred



# Model notice appendix

**Method 1 - Notice of electronic disclosure to employees who can effectively access e-documents where they perform their duties, and access the employer's electronic information systems is an integral part of their duties**

*This is a sample electronic notice attaching or linking to electronic documents required to be provided by ERISA, or by other federal law that adopts the ERISA e-disclosure standards. This notice could be provided electronically, as part of the email attaching or linking to the relevant documents. The notice could also be provided in hardcopy.*

Date:

**IMPORTANT INFORMATION ABOUT YOUR  
HEALTHCARE AND OTHER WELFARE BENEFITS**

As a participant in the *[insert name of the employer's plan]* ("the Plan"), you are entitled to be furnished with certain documents required by ERISA. *[Insert Employer name]* ("the Employer") intends to provide the following documents to you by electronic delivery, as described below:

- *[Insert all ERISA required documents the employer intends to distribute electronically via **email**, for example: "ABC Company Inc. Group Medical Summary Plan Description." Also **describe the relevance or importance of the document** (e.g., "This document provides an important summary of your health care benefits, eligibility for those benefits, and other matters related to health care insurance coverage.")]*

These documents are *[attached to this email]* *[available on our intranet site at the following link:*  
*\_\_\_\_\_]*

You have a right to request and obtain a paper version of any of these documents at no charge. Contact *[insert Employer contact information (name, address, telephone and email)]*.

## Method 2 – Consent via email

### Notice of electronic disclosure to employees and other individuals who cannot effectively access e-documents where they perform their duties, or access to the employer's electronic information systems is not an integral part of their duties

*This is a sample email notice of intent to supply disclosures electronically **as email attachments**, and requesting consent via a reply to the email*

#### INSTRUCTIONS

*This statement and accompanying form may be used for obtaining consent to e-disclosures to individuals with either no job-related access to the employer's electronic information systems, or individuals who don't access the employer's systems as an integral part of their duties.*

*Examples include an employee with no computer on his or her desk, a COBRA qualified beneficiary or the employee's covered spouse. Typically, this disclosure and request for consent would be provided electronically via an email to an email address provided by the individual to the employer. However, the disclosure and request for consent, and the employee's or other recipient's consent itself, may be made and retained in hard copy.*

*This model notice is designed to be sent electronically. **The model text below offers one, but not the only, option or method for supplying e-disclosures.** This version assumes the employer intends to provide e-disclosures as attachments to an email, and this version provides both initial notice of the intent to supply disclosures electronically and solicits consent via a reply to the employer's email.*

*In this example, once consent is received the employer would send the e-disclosures in a **separate email**, replying to the individual's consent.*

### NOTICE OF INTENTION TO SUPPLY BENEFIT PLAN-RELATED DISCLOSURES ELECTRONICALLY

As the sponsor of *[insert name of employer plan]* ("the Plan"), we are obligated to furnish you with certain documents related to the Plan and your benefits under the Plan. We would like to provide several of these documents to you electronically. The documents are:

- *[Insert all ERISA required documents the employer intends to distribute electronically via **email**, for example: "ABC Company Inc. Group Medical Summary Plan Description." **Describe the relevance or importance of the document** (e.g., "This document provides an important summary of your health care benefits, eligibility for those benefits, and other matters related to health care insurance coverage.")]*

Our intention, if you consent, is to send you these documents electronically as attachments to an email. The documents will be sent to you as PDF documents. You'll need a smartphone, tablet or computer with PDF reader software, such as Adobe Acrobat Reader, to open and read the documents.

If we change the way we provide these documents (for example, change from PDF to some other format) so that there's a material risk you won't be able to receive or read the documents, we will send you a new notice like this one, and a new consent form.

If you consent to receiving these documents as an attachment to our email, you are free to withdraw that consent at any time. To do that, please notify us. Please send your notice of withdrawal of consent to: *[Insert Employer contact information, such as name or title/department, address, telephone number and email address.]* If you choose to withdraw your consent, future documents like this will be provided to you in hard copy at your address on file.

Of course, you have a right to request and obtain at no charge to you a paper version of any document we send you electronically. If you'd like a paper copy please contact us at the postal or email address listed above, in the preceding paragraph. We will either hand deliver or mail the documents to you, at the address you prescribe.

***To consent to our sending you these documents electronically in an email, please do the following:***

- ***Reply to this email*** and check the box below, reflecting your consent and acknowledgement.

I have read the email above regarding *[insert Employer name]*'s desire to send me certain employee benefit-related disclosures as attachments to an email. I consent to receiving the documents by email at the address my employer has on file or at this address: *Please insert email address* \_\_\_\_\_  
I confirm that I can receive, retrieve and view the documents via email, and I understand I can withdraw this consent at any time as described in the email above.

*Note: If the plan sponsor's email platform doesn't allow for or accommodate a "check box" approach like the example above, the instructions may have to provide that the employee or other recipient must either print the email, check the box, scan and email the consent document, or alternatively, cut and paste the consent language into the email reply, or demonstrate consent in some other method.*

\* \* \* \* \*

*Once the individual has provided consent under Method 2, the plan sponsor may continue to send disclosures to the individual electronically, unless consent is revoked or unless a change in hardware or software requirements needed to access the e-documents creates a material risk that the*

*individual will be unable to access or retain e-documents (in that latter event the individual must again receive notice of the hardware and software requirements and the right to withdraw consent, and the individual must then again affirmatively consent to e-disclosure).*

*Where consent has not been revoked and a new consent is not required, and the plan sponsor is preparing to provide new or additional disclosures electronically, the plan sponsor could send something like the following notice to the individual that new disclosures are about to be provided electronically:*

Date:

### **IMPORTANT INFORMATION ABOUT YOUR HEALTHCARE AND OTHER WELFARE BENEFITS**

As a participant in the *[insert name of the employer's plan]* ("the Plan"), you are entitled to be furnished with certain documents required by ERISA.

You previously consented to receiving these documents electronically. *[Insert Employer name]* intends to provide the following documents to you by electronic delivery, as described below:

- *[Insert all ERISA required documents the employer intends to distribute electronically via **email**, for example: "ABC Company Inc. Group Medical Summary Plan Description." Also **describe the relevance or importance of the document** (e.g., "This document provides an important summary of your health care benefits, eligibility for those benefits, and other matters related to health care insurance coverage.")]*

These documents are attached to this email.

You have a right to request and obtain a paper version of any of these documents at no charge. Contact *[insert Employer contact information (name, address, telephone and email)]*.

## Method 2 – Consent via internet or intranet link

### Notice of electronic disclosure to employees and other individuals who cannot effectively access e-documents where they perform their duties, or access to the employer's electronic information systems is not an integral part of their duties

*This is a sample email notice of intent to supply disclosures electronically via the internet or intranet, and requesting consent via a check-box on a webpage*

#### INSTRUCTIONS

*This statement and accompanying form may be used for obtaining consent to e-disclosures to individuals with either no job-related access to the employer's electronic information systems, or individuals who don't access the employer's systems as an integral part of their duties.*

*Examples include an employee with no computer on his or her desk, a COBRA qualified beneficiary or the employee's covered spouse. Typically, this disclosure and request for consent would be provided electronically via an email to an email address provided by the individual to the employer. However, the disclosure and request for consent, and the employee's or other recipient's consent itself, may be made and retained in hard copy.*

*This model notice is designed to be sent electronically. **The model text below offers one, but not the only, option or method for supplying e-disclosures.** This version assumes the employer intends to supply the e-disclosures via the internet or an intranet page, where consent can be provided via a check-box, and the documents then made available for downloading.*

### NOTICE OF INTENTION TO SUPPLY BENEFIT PLAN-RELATED DISCLOSURES ELECTRONICALLY

As the sponsor of *[insert name of Employer plan]* ("the Plan"), we are obligated to furnish you with certain documents related to the Plan and your benefits under the Plan. We would like to provide several of these documents to you electronically. The documents are:

- *[Insert all ERISA required documents Employer intends to distribute electronically via **email**, for example: "ABC Company Inc. Group Medical Summary Plan Description." **Describe the relevance or importance of the document** (e.g., "This document provides an important summary of your health care benefits, eligibility for those benefits, and other matters related to health care insurance coverage.")]*

Our intention, if you consent, is to provide you access to these documents electronically via an intranet or internet web page. The documents will be available there as PDF documents. You'll need a smartphone, tablet or computer with PDF reader software, such as Adobe Acrobat Reader, to open and read the documents. You will also be able to download the documents for saving and printing at your convenience.

If we change the way we provide these documents (for example, change from PDF to some other format) so that there's a material risk you won't be able to receive or read the documents, we will send you a new notice like this one, and a new consent form.

If you consent to us providing you access to these documents electronically, you are free to withdraw that consent at any time. To do that, please notify us. Please send your notice of withdrawal of consent to: *[Insert Employer contact information, such as name or title/department, address, telephone number and email address.]* If you choose to withdraw your consent, future documents like this will be provided to you in hard copy at your address on file.

Of course, you have a right to request and obtain at no charge to you a paper version of any document we send you electronically. If you'd like a paper copy please contact us at the postal or email address listed above, in the preceding paragraph. We will either hand deliver or mail the documents to you, at the address you prescribe.

**To consent to our providing you these documents electronically, please click [here](#) and follow the instructions on the screen.**

\* \* \* \* \*

*The hyperlink then takes the individual to an intranet or internet site, where consent and acknowledgment can be supplied. We recommend repeating, on the web page, the explanation included in the employer's original email. The following text block would then appear on the hyperlink landing page.*

**Sample language for webpage on which the individual may supply consent to e-disclosures:**

As the sponsor of *[insert name of Employer plan]* ("the Plan"), we are obligated to furnish you with certain documents related to the Plan and your benefits under the Plan. We would like to provide several of these documents to you electronically. The documents are:

- *[Insert all ERISA required documents Employer intends to distribute electronically via **email**, for example: "ABC Company Inc. Group Medical Summary Plan Description." **Describe the relevance or importance of the document** (e.g., "This document provides an important summary of your health care benefits, eligibility for those benefits, and other matters related to health care insurance coverage.")]*

Our intention, if you consent, is to provide you access to these documents electronically via this webpage. The documents are available here as PDF documents. You'll need a smartphone, tablet or computer that can open PDF documents, in order to review these documents. Your smartphone, tablet or computer will need PDF reader software, such as Adobe Acrobat Reader, to open and read the documents. You will also be able to download the documents for saving and printing at your convenience.

If we change the way we provide these documents (for example, change from PDF to some other format) so that there's a material risk you won't be able to receive or read the documents, we will send you a new notice like this one, and a new consent form.

If you consent to us providing you access to these documents electronically, you are free to withdraw that consent at any time. To do that, please notify us. Please send your notice of withdrawal of consent to: *[Insert Employer contact information, such as name or title/department, address, telephone number and email address.]*

Of course, you always have a right to request and obtain at no charge to you a paper version of any document we send you electronically. If you'd like a paper copy please contact us at the postal or email address listed above, in the preceding paragraph. We will either hand deliver or mail the documents to you, at the address you prescribe.

To consent to receiving your employee benefit plan-related disclosures electronically, please click the box below, and insert your name and email address. You will be linked to another web page from which you can view and download the documents.

I consent to receiving electronically the employee benefit plan-related disclosures described to me in an email from my employer. I confirm that I can receive, retrieve and view the documents via the internet or intranet, and I understand I can withdraw this consent at any time as described in the email I received.

Name:

Confirm email address:

*If the site requires a password to access the documents, insert a dialogue box to insert the password; include instructions for lost or forgotten passwords.*

\* \* \* \* \*

*When the individual clicks the consent box and supplies his or her name and confirms his or her email address, the individual is automatically re-directed to **another intranet or internet page where the disclosures are available**. We recommend the webpage describe the significance of the document if the significance is not otherwise apparent, and a right to request a paper version:*

#### **Employee benefit plan-related disclosures:**

Please click on the hyperlinks below to view and/or download the documents listed. Of course, you have a right to request and obtain at no charge to you a paper version of any document available for download here. If you'd like a paper copy please contact us at \_\_\_\_\_ . We will either hand deliver or mail the documents to you, at the address you prescribe.

- [Welfare benefit plan summary plan description.](#) *[Insert a description of the document's significance, for example, "This document provides a plain-*



language description of your benefits, including eligibility, exclusions, claims and appeals procedures, and your other rights and obligations.”]

- [Summary of benefits and coverage, EPO option](#). [Insert a description of the document’s significance, for example, “This document provides an 8-page summary of your benefits, including examples of how the plan’s cost-sharing features (deductibles, copayments and co-insurance) work, etc.”]

If your device does not have a PDF reader installed, click [here](#).

\* \* \* \* \*

*Once the individual has provided consent under Method 2, the plan sponsor may continue to send disclosures to the individual electronically, unless consent is revoked or unless a change in hardware or software requirements needed to access the e-documents creates a material risk that the individual will be unable to access or retain e-documents (in that latter event the individual must again receive notice of the hardware and software requirements and the right to withdraw consent, and the individual must then again affirmatively consent to e-disclosure).*

*But where consent has not been revoked and a new consent is not required, and the plan sponsor is preparing to provide new disclosures electronically, the plan sponsor could send something like the following notice to the individual that new disclosures are available electronically.*

Date:

## **IMPORTANT INFORMATION ABOUT YOUR HEALTHCARE AND OTHER WELFARE BENEFITS**

As a participant in the [insert name of the employer’s plan] (“the Plan”), you are entitled to be furnished with certain documents required by ERISA.

You previously consented to receiving these documents electronically. [Insert Employer name] intends to provide the following documents to you by electronic delivery, as described below:

- [Insert all ERISA required documents the employer intends to distribute electronically via **email**, for example: “ABC Company Inc. Group Medical Summary Plan Description.” Also **describe the relevance or importance of the document** (e.g., “This document provides an important summary of your health care benefits, eligibility for those benefits, and other matters related to health care insurance coverage.”)]

These documents are available on our intranet site at the following link: [\[link\]](#).

You have a right to request and obtain a paper version of any of these documents at no charge. Contact [insert Employer contact information (name, address, telephone and email)].

## Notice seeking consent to distribute Form 1095-C electronically

*Some employers prefer to furnish Forms 1095-C to their employees electronically. The IRS permits e-delivery of the Form 1095-C as long as the recipient consents. The consent may be electronic, as in an email, or it may be on paper. If on paper, the recipient must confirm his or her consent electronically, to demonstrate the ability to retrieve the electronic Form. Many employees have consented to receiving Forms W-2 electronically; that consent does not apply to Form 1095-C. A separate or additional consent is required.*

*Consent to e-delivery must be preceded by a **notice** to the recipient reflecting the information shown below. The notice may be given electronically. Vendors (who may have prepared the Forms) can facilitate consent by providing this notice when individual accesses a website to retrieve a Form 1095-C. Sometimes, however, the employer prefers to make the Form 1095-C available electronically via the employer's own intranet or website, such as when the employer has mailed Forms 1095-C to employees but then discovers that some Forms need correction, and the employer does not want to mail a second large batch of Forms.*

*These employers might want to alert employees, perhaps in an email, that a corrected Form 1095-C is available online. The notice to employees should include the information shown below. Although there is no required format for the notice, the employer is required to make the heading or subject line conspicuous to ensure it alerts the reader to the relevance and importance of the notice.*

### **IMPORTANT TAX RETURN DOCUMENT AVAILABLE**

*[If this consent is provided via email, this line—in all caps—must be in the subject line.]*

You are entitled to receive IRS Form 1095-C from *[employer name]*. This Form is required by Internal Revenue Code section 6055 and/or 6056. This form: *[choose one or both of the following as applicable]*

- Reflects the months (if any) during the prior calendar year during which you and, as applicable, any of your dependents were covered under our self-insured health plan.
- Reflects, if for at least a month in the prior calendar year you were considered a "full-time employee" of ours for purposes of the Affordable Care Act, whether we offered you health insurance, whether you enrolled in it, and other factors related to our health plan.

You might need to print your Form 1095-C and use it to help prepare your federal and perhaps your state income tax return.

This Form 1095-C is available to you electronically by clicking *[insert hyperlink]* [this link](#) (you will need a computer, tablet, smartphone, or other device that can access the internet, in order to retrieve your Form 1095-C electronically).

If you click the link to retrieve your electronic copy, you will be deemed to have consented to receive that copy electronically. However, you are not required to consent. We will furnish you a

paper copy if you do not consent to the electronic delivery. Here are some things you should know about consenting to electronic delivery of your Form 1095-C:

- If you consent to electronic delivery, that consent will remain in effect until you revoke it.
- Even if you consent to receiving your Form 1095-C by clicking the link above, you may request a paper copy by *[describe a procedure]*.
- If you consent and then request a paper copy, we will not consider that request a withdrawal of your consent to receiving your Form 1095-C electronically.
- You may at any time, however, withdraw your consent to electronic delivery. To do that, *[describe a procedure]*. We will confirm the withdrawal of your consent either electronically or on paper. The withdrawal of your consent does not apply to previous Forms 1095-C provided to you electronically, pursuant to your request. We will, however, provide you with a paper copy of the current Form 1095-C within 30 days of receiving the withdrawal of your consent.

We will cease providing you a Form 1095-C electronically if you terminate employment or *[insert other circumstances, if any]*. In addition, the Form 1095-C will no longer be available online after *[insert a date, for example, October 15 of the year in which the person's tax return is due]*.

Again, if you would like to receive your Form 1095-C electronically, it is available by clicking *[insert hyperlink]* [here](#).

If you would like to change your contact information, please *[describe a procedure]*.



**LOCKTON<sup>®</sup>**

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UNCOMMONLY INDEPENDENT